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1931

WORKMEN'S COMPENSATION ACT

OF THE

STATE OF MONTANA

SAFETY FIRST

Compiled from the Revised Codes of 1921 as Amended by Act of the Nineteenth Legislature of 1925, the Twenty-First Legislature of 1929, and the Twenty-Second Legislature of 1931

Administered by the

INDUSTRIAL ACCIDENT BOARD

J. BURKE CLEMENTS, Chairman

GEORGE P. PORTER A. H. STAFFORD

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2816. Name of act—What each part to contain. This act shall be known and may be cited as the Workmen's Compensation Act. Part I (sections 2816 to 2969) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions;" part II (sections 2970 to 2977) shall contain those sections which refer to compensation plan number one; part III (sections 2978 to 2989) shall contain those sections which refer to compensation plan number two; part IV (sections 2990 to 3011) shall contain those sections which refer to compensation plan number three; part V (sections 3012 to 3033) shall contain those sections which may be referred to as the "safety provisions."

History: En. Sec. 1, Ch. 96, L. 1915.

The Workmen's Compensation Act is applicable to counties and county employees and as such it is not class legislation, nor is it in violation of the constitutional prohibition against donations to individuals, Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

The Workmen's Compensation Act is not repugnant to the state constitution. Shea v. North-Butte Min. Co., 55 Mont. 522, 179 Pac. 499.

The rule, that a statute will not be declared invalid on constitutional grounds unless its invalidity is made to appear beyond a reasonable doubt, applies with peculiar force where, as in the case of the Workmen's Compensation Act, the statute seems to have been found satisfactory after a four-year period of operation, by those directly affected by it, namely, the employer and the employee. Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

Inasmuch as the Workmen's Compensation Act becomes binding upon the employer and employee only at their election, neither may thereafter object to its enforcement, and the fact that the modes in which they may indicate their election are different, does not make it objectionable on the ground that it discriminates against either employer or employee. Shea v. North-Butte Min. Co., 55 Mont. 522, 534, 179 Pac. 499.

The silence of an employee, when given an opportunity to elect whether he will be bound or not bound by the provisions of the workmen's compensation law, establishes a presumption that he elects to become subject to it. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

It is competent for a party to waive his right to have a cause of action determined by a court before it actually arises, especially where the legislature has provided a substitute remedy, as under the compensation act, which renders his right to relief absolute. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

While the industrial accident board, created as a purely administrative body, exercises many functions that are judicial in character, it is not vested with judicial power, in the sense in which that expression is used in the constitution, wherein it means the power of a court to decide, to pronounce a judgment, and to carry it into effect, between persons and parties who bring a case before it for decision. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

Cited or applied in Chenoweth v. Great Northern Ry. Co., 50 Mont. 481, 488, 148 Pac. 330.

Constitutionality of workmen's compensation acts, see notes in Ann. Cas. 1912B, 174; Ann. Cas. 1915A, 247; Ann. Cas. 1916B, 1286; Ann. Cas. 1917E, 401, 839; Ann. Cas. 1918B, 611; 34 L. R. A. (N. S.) 162; 37 L. R. A. (N. S.) 466; L. R. A. 1916A, 409; L. R. A. 1917D, 51.

2817. Reference to plan numbers. Whenever compensation plans number one, two, or three, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject-matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915.

2818. "Compensation provisions." The "compensation

provisions" of this act, whenever referred to, shall be held to include the provisions of compensation plans number one, two, or three, and all other sections of this act applicable to the same, or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915.

2819.—Industrial accident board—Compensation—Term and salary. There is hereby created a board to consist of three members; the commissioner of agriculture, labor, and industry shall be one member; the state auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of five thousand dollars, payable monthly, and shall be chairman of the board.

The board shall elect one of their number as treasurer of the board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921.

Cited or applied as section 2 (a), chapter 96, Laws of 1915, before amendment, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2820.—Vacancy in office and removal of appointive member. A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

History: En. Sec. 2, Ch. 96, L. 1915.

2821.—Official bonds. Each member shall, upon entering upon the duties of his office, execute to the state of Montana and file with the secretary of state a bond in the sum herein prescribed, executed by not less than four responsible sureties, or by some surety company authorized to become sole surety on bonds in the state of Montana, such bond to be approved by the governor, and conditioned that he will faithfully and impartially discharge the duties of his office.

Such bonds shall be in addition to any other bonds required by law to be furnished.

History: En. Sec. 2, Ch. 96, L. 1915.

2822. Treasurer's bond—Bond of other members. The bond of the treasurer of the board shall be in a sum to be fixed by the governor, not less than twenty-five thousand dollars, nor more than one hundred thousand dollars. The bonds of the members of the board other than the treasurer shall be in the sum of ten thousand dollars.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (d), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2823. Ex-officio members to receive no additional compensation. Neither the commissioner of labor and industry nor the state auditor shall receive any additional compensation for the duties imposed upon them by this act.

History: En. Sec. 2, Ch. 96, L. 1915.

2824. Quorum—Powers in case of vacancy—Hearings—Findings and orders. A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the majority of the board when in session as a board shall be deemed to be the act of the board, but any investigation, inquiry, or hearing which the board has power to undertake or to hold, may be undertaken or held by or before any member thereof, or any examiner or referee appointed by the board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee, pursuant to such investigation, inquiry, or hearing, when approved and confirmed by the board and ordered filed in its office, shall be deemed to be the finding, order, decision, or award of the board.

History: En. Sec. 2, Ch. 96, L. 1915.

2825. Seal of board. The board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (g), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2826. Office and furnishings—Temporary quarters. The board shall keep its principal office in the capital of the state, and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

History: En. Sec. 2, Ch. 96, L. 1915.

2827.—Secretary—Appointment, term, duties—Records. The board shall appoint a secretary who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board; to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (i), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2828. Other assistants and employees. The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (j), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2829. Compensation of officers and employees—Term of office and duties. All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office at the pleasure of the board, shall perform such duties as are imposed on them by law or by the board.

History: En. Sec. 2, Ch. 96, L. 1915.

2830. Salaries to be paid monthly—Approval and auditing. The salaries of members of the board, secretary, and every other person holding office or employment under the board, as fixed by law or by the board, shall be paid monthly after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915.

2831. Expenses to be paid from what fund. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers

and employees incurred while on business of the board, either within or without the state, shall, unless otherwise provided in this act, be paid from the industrial administration fund, after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915.

2832. Blank forms, minutes and records. The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board, and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (n), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2833. Reports and bulletins which may be published. The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915.

2834. Fees of board. The board shall have power and authority to charge and collect the following fees:

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, fifteen cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents for each folio.

2. To fix and collect reasonable charges for publications issued under its authority.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the industrial administration fund, and shall be accompanied by a detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915.

2835. Attorney-general legal adviser of board. The attorney-general shall be the legal adviser of the board, and

shall represent it in all proceedings whenever so requested by the board or any member thereof.

History: En. Sec. 2, Ch. 96, L. 1915.

2836. Defenses excluded in personal injury action—Negligence of employee—Fellow-servant—Assumption of risk. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense:

(1) That the employee was negligent, unless such negligence was wilful;

(2) That the injury was caused by the negligence of a fellow employee;

(3) That the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

History: En. Sec. 3, Ch. 96, L. 1915.

Statutes affecting defense of contributory negligence in actions by servants against masters, see note in 5 Ann. Cas. 633.

Constitutionality of statute abrogating fellow-servant doctrine, see notes in 10 Ann. Cas. 1113; Ann. Cas. 1916D, 268.

2837. Defenses not excluded in personal injury action against employer in non-hazardous occupation and certain other occupations. The provisions of Section 2836 shall not apply to actions to recover damages for personal injuries sustained by household and domestic servants or those employed in farming, dairying, agricultural, viticultural, and horticultural, stock or poultry raising, or engaged in the operation and maintenance of steam railroads conducting interstate commerce, or persons whose employment is of a casual nature.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 121, L. 1925.

Liability of general or special employer for compensation to injured employee, see notes in L. R. A. 1917D, 113; 3 A. L. R. 1181.

Farm laborers and domestic servants as within or outside workmen's compensation acts, see notes in Ann. Cas. 1917D, 504; L. R. A. 1917D, 147; L. R. A. 1918F, 202.

2838. Employers not liable for death or injury other than herein defined—Employees who elect not to come under law. Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 2836, nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee

except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or personal injury to any such employee are hereby abolished; provided that section 2836 shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries or death, against an employer who has elected to come under this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Constitutionality of workmen's compensation act giving choice of remedies exclusively to either employer or employee, see note in 6 A. L. R. 1562.

2839. Employers not liable for death or injury other than herein defined—Employees who elect not to come under act. Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and such employee of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. Sec. 3, Ch. 96, L. 1915.

When an employee has elected to become subject to the provisions of the Workmen's Compensation Act, neither he nor his personal representatives in case of the former's death may thereafter prosecute an action for damages against the employer for an injury suffered by him during the course of his employment. Shea v. North-Butte Min. Co., 55 Mont. 522, 532, 179 Pac. 499.

Right to and effect of election with respect to acceptance of provisions of Workmen's Compensation Act, see notes in Ann. Cas. 1915C, 308; Ann. Cas. 1918A, 700; Ann. Cas. 1918B, 715.

2840. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer—Duty of governing body of corporations. Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee.

Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever any contractor engaged in the performance of contract work for any public corporation is the employer, such public corporation upon final settlement with the contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contract under the provisions of this act. Whenever any public corporation neglects or refuses to file with the industrial accident board monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921.

Compensation plan No. 3 is, as to a city, exclusive, compulsory, and obligatory upon both employer and employee. City of Bute v. Industrial Accident Board, 52 Mont. 75, 77, 156 Pac. 130.

Cited or applied as section 3 (e), chapter 96, Laws of 1915, before amendment, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268, L. R. A. 1916D, 628; City of Butte v. Industrial Accident Board, 52 Mont. 75, 77, 156 Pac. 130.

Applicability of compensation acts to states, counties, cities, districts, charitable and other public institutions, and their employees, see notes in L. R. A. 1917D, 143; L. R. A. 1918F, 190.

2841. Employers engaged in hazardous industries—Election. Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous," may, on or before the first day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may, on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed

by the board, and shall state whether such employer shall be bound by compensation plan number one, or compensation plan number two, or compensation plan number three, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (f), chapter 96, Laws of 1915, City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2842. **Employee engaged in hazardous occupation bound by what plan—Election.** Every employee in the industries, works, occupations, or employments in this act specified as "hazardous," shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act, and until such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed by the board, together with the proof of such service.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (g), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 80, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2843. **Presumption when employer fails to make election —Election binds employer until what time.** If the employer shall fail to make the election herein provided for, at the time and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either compensation plan number one, or compensation plan number two, or compensation plan number three for that fiscal year, unless such empoyer shall elect to become subject to or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such compensation plans, after the expiration of said fiscal year, or unless he shall elect to be bound for the suc-

ceeding fiscal year by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (h), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2844. Employer shall make election before being bound —Employee presumed to have elected.—It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (i), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2845. Election at any time. Any employee who has elected not to be bound by the provisions of this act in the manner herein provided may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensations plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (j), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2846. Compensation when employer has not elected. No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect, and has failed to come under one or the other of the compensation plans herein provided.

History: En. Sec. 3, Ch. 96, L. 1915.

2847. Act applies to all inherently hazardous occupations as enumerated. This act is intended to apply to all inherently

hazardous works and occupations within this state, and it is the intention to embrace all thereof in the four following sections, and the works and occupations enumerated in said sections are hereby declared to be hazardous, and any employer having any workmen engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees.

History: En. Sec. 4, Ch. 96, L. 1915; amd. Sec. 2, Ch. 100, L. 1919.

2848. **Construction work.** Tunnels, bridges, trestles; subaqueous works, ditches, and canals (other than irrigation without blasting), dock excavations, fire-escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile-driving, steam railroads, steeples, towers, or grain elevators, not metal framed; dry-docks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks, or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fireproof doors or shutters; steam-heating plants; blasting; tanks, water-towers, or wind-mills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; gas works or systems; marble, stone, or brick work; road-making, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smoke-stacks or chimneys; excavations not otherwise specified; blast-furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat-building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam-boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone, or tile setting; metal-ceiling work; mill or ship-wrighting; painting of building or structures; installation of automatic sprinklers; concrete laying in floors, foundations, or street paving; asphalt laying; covering steam-pipe or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire-alarm apparatus in buildings; house-heating or ventilating systems, glass setting; building hothouses; lathing, paper-hanging, plastering, wooden stair building.

History: En. Sec. 4, Ch. 96, L. 1915.

2849. Operation. (Including repair work) of logging, cable, electric, street, steam, or other railroads; dredges; interurban electric railroads using third-rail systems; electric light and power plants; quarries; telegraph systems; stone crushers; blast-furnaces; smelters; coal-mines, gas-works; steamboats; tugs and ferries, mines other than coal; steam-heating or power plants; grain elevators; freight elevators and passenger elevators; laundries; waterworks, paper-mills, pulp-mills; garbage and fertilizer works.

History: En. Sec. 4, Ch. 96, L. 1915; amd. Sec. 1, Ch. 2, L. 1925.

2850. Factories using power-driven machinery. Stamping tin metal; bridge work; railroad car, or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle-mills, staves, veneer, box, lath, packing-cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibre ware, rolling-mills; making steam shovels or dredges; tanks, water-towers, asphalt; building material not otherwise specified; fertilizer; cement, stone, with or without machinery; kindling-wood, masts or spars, with or without machinery; canneries, metal stamping; creosoting works; excelsior; iron; steel; copper; zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra-cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, briquettes; breweries; bottling works; boiler works; foundries; machine-shops not otherwise specified; cordage; working in food-stuffs; including oils, fruits, and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber, or textiles not otherwise specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving, and lithographing, sugar factories.

History: En. Sec. 4, Ch. 96, L. 1915.

2851. Miscellaneous work. Operating stock-yards, with or without railroad entry; packing-houses; wharf operations; artificial ice and refrigerating or cold-storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving-picture machine operators; fireworks manufacturing, powder works.

History: En. Sec. 4, Ch. 96, L. 1915.

2852. Hazardous occupations not enumerated or hereafter arising. If there be or arise any hazardous occupation

or work other than hereinbefore enumerated, it shall come under this act and its terms, conditions, and provisions as fully and completely as if hereinbefore enumerated.

History: En. Sec. 5, Ch. 96, L. 1915.

2853. **Meaning of words employed in act.** Unless the context otherwise requires, words or phrases employed in this act shall have the meaning hereinafter defined.

History: En. Sec. 6, Ch. 96, L. 1915.

2854. **Factories defined.** "Factories" means undertakings in which the business of working at commodities is carried on with power-driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

History: En. Sec. 6, Ch. 96, L. 1915.

2855. **Workshop defined.** "Workshop" means any plant, yard, premises, room, or place where power-driven machinery is employed and manual labor is exercised by way of trade or gain, or otherwise in or incidental to the process of making, altering, repairing, printing, or ornamenting, finishing, or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room, or place the employer of the person working therein has the right of access or control.

History: En. Sec. 6, Ch. 96, L. 1915.

2856. **Mill defined.** "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering, or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

History: En. Sec. 6, Ch. 96, L. 1915.

2857. **Mine defined.** "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

History: En. Sec. 6, Ch. 96, L. 1915.

What is a "mine" within the meaning of compensation acts, see note in 11 A. L. R. 151.

2858. **Quarry defined.** "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale,

gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

History: En. Sec. 6, Ch. 96, L. 1915.

2859. Engineering defined. "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam, or water-power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

History: En. Sec. 6, Ch. 96, L. 1915.

2860. "Reasonably safe place to work" defined. "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

History: En. Sec. 6, Ch. 96, L. 1915.

2861. "Reasonably safe tools and appliances" defined. "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

History: En. Sec. 6, Ch. 96, L. 1915.

2862. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment, or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. Sec. 6, Ch. 96, L. 1915. amd. Sec. 2, Ch. 121, L. 1925.

Cited or applied as section 6 (i), chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268; L. R. A. 1916D, 628; City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130.

2863. "Employee" and "workman" defined. "Employee" and "workman" are used synoymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written including aliens and also including minors, whether lawfully or unlawfully employed, and all who are connected with or engaged in hazardous occupations of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the Compensation Law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service.

History: En. Sec. 6, Ch. 96, L. 1915; amd. Sec. 3, Ch. 121, L. 1925.

2864. "Injury" to include death. "Injury" means and shall include death resulting from injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2865. "Beneficiary" defined. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years, or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years; provided, however, that no invalid child over the age of eighteen years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

History: En. Sec. 6, Ch. 96, L. 1915. amd. Sec. 4, Ch. 121, L. 1925.

Cited or applied as section 6 (1), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

Who is dependent within Workmen's Compensation Act, see notes in Ann. Cas. 1913E, 480; Ann. Cas. 1918B, 479.

2866. "Major dependent" defined. "Major dependent" means if there be no beneficiary as defined in the preceding section, the father and mother, or the survivor of them, if actually dependent upon the decedent at the time of his injury,

then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

History: En. Sec. 6, Ch. 96, 1915; amd. Sec. 5, Ch. 121, L. 1925.

Cited or applied as section 6 (m), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2867. "Minor dependent" defined. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections the brothers and sisters under the age of eighteen years and invalid brothers and sisters over the age of eighteen years; provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his injury. Minor dependents shall be awarded compensation to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

History: En. Sec. 6, Ch. 96, L. 1915; amd. Sec. 6, Ch. 121, L. 1925.

Cited or applied as section 6 (n), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2868. "Invalid" defined. "Invalid" means one who is physically or mentally incapacitated.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (o), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2869. "Child" defined, to include whom. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2870. "Injury" or "injured" defined. "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

History: En. Sec. 6, Ch. 96, L. 1915.

2871. The singular and plural include both. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

History: En. Sec. 6, Ch. 96, L. 1915.

2872. Masculine includes all genders. Wherever the masculine gender is used, the feminine and neuter shall be included.

History: En. Sec. 6, Ch. 96, L. 1915.

2873. "Physician" to include "surgeon." The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this state.

History: En. Sec. 6, Ch. 96, L. 1915.

2874. "Week" defined. "Week" means six working days, but includes Sundays.

History: En. Sec. 6, Ch. 96, L. 1915.

2875. "Wages" defined. "Wages" mean the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

History: En. Sec. 6, Ch. 96, L. 1915.

2876. "Wife" or "widow" defined. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2877. "Husband" or "widower" defined. "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2878. "Board" defined. "Board" means the industrial accident board of the state of Montana.

History: En. Sec. 6, Ch. 96, L. 1915.

2879. "Commissioner" defined. "Commissioner" means one of the members of the industrial accident board.

History: En. Sec. 6, Ch. 96, L. 1915.

2880. "Appointed member of the board" defined. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

History: En. Sec. 6, Ch. 96, L. 1915.

2881. "Order" defined. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

History: En. Sec. 6, Ch. 96, L. 1915.

2882. "General order" defined. "General order" shall mean and include such order made under the safety provisions

of this act as applies generally throughout the state to all persons, employments, or places of employment, or employees working in such places of employment classed as hazardous in this act.

History: En. Sec. 6, Ch. 96, L. 1915.

2883. "Local order" defined. "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the industrial accident board has jurisdiction.

History: En. Sec. 6, Ch. 96, L. 1915.

2884. "Pay-roll" defined—Estimate to establish pay-roll. "Pay-roll," "annual pay-roll" or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly pay-roll for the current year; provided that an estimate may be made by the board for any employer starting in business where no average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

History: En. Sec. 6, Ch. 96, L. 1915.

2885. "Year" defined. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth day of the succeeding June.

History: En. Sec. 6, Ch. 96, L. 1915.

2886. "Public corporation" defined. "Public corporation" means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (gg), chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268, L. R. A. 1916D, 628.

2887. "Insurer" defined. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

History: En. Sec. 6, Ch. 96, L. 1915.

2888. "Casual employment" defined. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

History: En. Sec. 6, Ch. 96, L. 1915.

2889. "Plant of the employer" includes what. "The plant of the employer" shall include the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business or occupation.

History: En. Sec. 6, Ch. 96, L. 1915.

2890. "Independent contractor" defined. "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work, and not as to the means by which it is accomplished.

History: En. Sec. 6, Ch. 96, L. 1915.

Employee of independent contractor as workman within compensation act, see note in Ann. Cas. 1918D, 709.

2891. Compensation to children, brothers and sisters and invalid children—When ceases. In computing compensation to children and to brothers and sisters, only those under eighteen years of age, or invalid children over the age of eighteen years, shall be included, and in case of invalid children, only during the period in which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payment on account of such person or persons shall cease. Compensation to children, or brothers or sisters, except invalids, shall cease when such persons reach the age of eighteen years and in all cases shall cease when such person marries.

History: En. Sec. 7, Ch. 96, L. 1915; amd. Sec. 7, Ch. 121, L. 1925.

Cited or applied as section 7 (a), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2892. When compensation to beneficiaries, major or minor dependents, or widow ceases. If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent or such widow or widower to compensation under this act shall cease.

History: En. Sec. 6, Ch. 96, L. 1915.

2893. Compensation not paid to non-resident major or

minor dependents. No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

History: En. Sec. 8, Ch. 96, L. 1915.

Validity of Workmen's Compensation Act as affected by provision for compensation to aliens, see note in L. R. A. 1917D, 62.

Recovery under workmen's compensation acts by non-resident alien dependents, see note in L. R. A. 1918F, 496.

2894. Compensation to beneficiary not residing in United States. Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this act shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any non-resident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or non-resident, from partaking of the benefit of such law in the same degree as herein extended to non-resident beneficiaries.

History: En. Sec. 8, Ch. 96, L. 1915.

2895. Compromise with non-resident. Nothing in the preceding section shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this act, upon the approval of the board of such compromise settlement.

History: En. Sec. 8, Ch. 96, L. 1915.

2896. No compensation to non-resident beneficiaries until when. Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

History: En. Sec. 8, Ch. 96, L. 1915.

2897. Payment to non-resident beneficiaries made to

whom. Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul, or consular agent within the United States, representing the country in which such non-resident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

History: En. Sec. 9, Ch. 96, L. 1915.

2898. **Compensation paid to parent or guardian.** Where payment is due to a child under eighteen years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch. 96, L. 1915; amd. Sec. 8, Ch. 121, L. 1925.

2899. **Claims must be presented within what time.** In case of personal injury or death, all claims shall be forever barred unless presented in writing under oath to the employer, the insurer, or the board, as the case may be, within six months from the date of the happening of the accident, either by the claimant or some one legally authorized to act for him in his behalf.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919.

2900. **Exception in case of minors and incompetents as to period of limitation.** No limitation of time as provided in the preceding section or in this act shall run as against any injured workman who is mentally incompetent and without a guardian or an injured minor under eighteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided in the preceding section, shall begin to run on the date of appointment of such guardian or when such minor arrives at the age of eighteen years.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 9, Ch. 121, L. 1925.

2901. **Employer liable when lets work to other than in-**

dependent contractor. Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

History: En. Sec. 11, Ch. 96, L. 1915.

2902. Presumption when employer lets work by contract. Where any employer procures work to be done as specified in the preceding section, such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

History: En. Sec. 11, Ch. 96, L. 1915.

2903. When contractor performing casual employment becomes the employer. Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

History: En. Sec. 11, Ch. 96, L. 1915.

2904. Work to be paid for in property other than money —Wages. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.

History: En. Sec. 11, Ch. 96, L. 1915.

2905. Compensation in case of death of employee—De-

termination of beneficiary, etc. If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915.

2906. Examination of employee by physician—Request or order for—Physician may testify. Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the board, or any member or examiner, or referee thereof.

The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board, who shall make or be present at any such examination, may be required to testify as to the results thereof.

History: En. Sec. 13, Ch. 96, L. 1915.

Provisions in Workmen's compensation act, respecting medical examination of workmen, see notes in Ann. Cas. 1914C, 86; Ann. Cas. 1915 C, 918; Ann. Cas. 1918B, 670.

Duty of injured employee to submit to an examination, see note in 6 A. L. R. 1270.

2907. Contracts or agreements for hospital benefits, con-

ditions governing. Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 2917, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Such hospital contract or agreements must provide for medical, hospital and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

No assessment of employees for such hospital contracts or benefits shall exceed one dollar ($1.00) per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar ($1.00) per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers, such hospitals shall be no more than self-supporting from assessments of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessments of employees shall be paid in full to such hospital without deduction by the employer. All contracts provided for herein shall be subject to the provisions of section 2917, in so far as the same relates to cases of inadequate medical and hospital facilities. Whenever, in the opinion of the board, it is necessary for an employee to have specialized medical and hospital service not furnished by the contracting hospital or physician, the industrial accident board is authorized to direct that such specialized medical and hospital treatment be given, and to pay for the same with a properly drawn warrant on the industrial accident fund, not exceeding the sum of three hundred dollars ($300.00), where the workman is under plan three and the insurance carrier under plans one and two, provided, however, that this section shall apply only in cases where the average

number of employees paying a monthly fee on the hospital and medical contract is less than two hundred and fifty employees.

All contracts mentioned herein shall be filed with the board, which shall have full power to approve or disapprove any such contract, and no payment shall be legally collectable under any such contract or incidental thereto until approval thereof by the board.

2908. Hospitals to be under supervision of board. Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time, make reports of such services, attendances, treatments, receipts, and disbursements as the board may require.

History: En. Sec. 14, Ch. 96, L. 1915.

2909. Liability for treatment or malpractice in case of hospital service. Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act, the merits of such action shall be investigated by the industrial accident board, and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

History: En. Sec. 14, Ch. 96, L. 1915.

2910. Questions of law in certain actions. In any action to recover damages for any act connected with the treatment or care, or malpractice in treatment or care, of any sickness of or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court.

History: En. Sec. 12, Ch. 96, L. 1915.

2911. Who liable for injuries under the different plans of act, and in what amounts. Every employer who shall be-

come bound by and subject to the provisions of compensation plan number one, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two, and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan number three, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

History: En. Sec. 16, Ch. 96, L. 1915.

The phrase, "injury arising out of and in the course of his employment," means to that warrant payment of compensation, the facts must disclose that the injury or death, as the case may be, resulted from an industrial accident, arising out of and in the course of the employment. These terms are employed conjunctively, and not disjunctively, and the burden of proof is upon the claimant to establish, by a preponderance of the evidence, that the three of these conditions are met. Wiggins v. Industrial Accident Board, 54 Mont. 335, 342, 170 Pac. 9, Ann. Cas. 1918D, 1164, L. R. A. 1918F, 932.

The terms of the Workmen's Compensation Act are sufficiently comprehensive to include injury resulting from an act of God; thus, death resulting to an employee of a county, from lightning, while he is engaged at work on a public road, is death resulting from an industrial accident, but there can be no recovery therefor without proof that the injury causing death arose "out of" and "in the course of" the employment. Wiggins v. Industrial Accident Board, 54 Mont. 335, 342, 170 Pac. 9, Ann. Cas. 1918D, 1164, L. R. A. 1918F, 932.

In determining whether a claimant was a dependent, the board is not concerned with problematical future conditions, but only with the condition of the claimant at the time of the injury to the decedent. Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 644, 194 Pac. 496.

An injury to a workman arises "out of" his employment if it is the result of exposure to a hazard peculiar to the employment, or of exposure to more than the normal risk to which the people of the community generally are subject. Wiggins v. Industrial Accident Board, 54 Mont. 335, 343, 170 Pac. 9, Ann. Cas. 1918D, 1164; L. R. A. 1918F, 932.

2912. Compensation for injury producing temporary total disability. For an injury producing temporary total disability. Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars ($15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventeen dollars ($17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more

brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty percentum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of eighteen dollars ($18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to the maximum compensation of nineteen dollars ($19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five percentum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty dollars ($20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars ($21.00) per week; and subject in all cases to a minimum compensation of eight dollars ($8.00) per week, and subject to change when the number of beneficiaries or dependents decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury.

2913. Compensation for injury producing total disability permanent in character. For an injury producing total disability permanent in character. Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars ($15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five percentum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of seventeen dollars ($17.00) per week; where the injured em-

ployee has a wife and one child, or two children, or a father and mother, or two or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of eighteen dollars ($18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half (62½%) per centum of the weekly wages received at the time of the injury, subject to a maximum compensation of nineteen dollars ($19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty dollars ($20.00) per week; where the injured employee has a wife and four children, or five or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars ($21.00) per week; and subject in all cases to a minimum compensation of eight dollars ($8.00) per week, and subject to change when the number of beneficiaries or dependents decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury.

2914. **For partial disability—For an injury producing partial disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifteen dollars ($15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference

between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of seventeen dollars ($17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of eighteen dollars ($18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of nineteen dollars ($19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty dollars ($20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of twenty-one dollars ($21.00) per week; not exceeding, however, the maximum compensation allowed in cases of total disability, and not exceeding the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding, however, five hundred (500) weeks in cases of permanent partial disability, and (50) weeks in cases of temporary partial disability, subject to change when the number of dependents decreases.

2915. Compensation for injury causing death—Where the injury causes death—For beneficiaries residing within the United States. Where decedent leaves one beneficiary, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars ($15.00) per week; where decedent leaves two beneficiaries, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars ($17.00) per week; where decedent leaves three beneficiaries, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of eighteen dollars ($18.00) per week; where decedent leaves four beneficiaries, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury, subject to a maximum compensation of nineteen dollars ($19.00) per week; where decedent leaves five beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of twenty dollars ($20.00) per week; where decedent leaves six or more beneficiaries, sixty-six and two-thirds per centum (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars ($21.00) per week, and subject in all such cases to a minimum compensation of eight dollars ($8.00) per week.

For beneficiaries residing outside of the United States. Where decedent leaves one beneficiary, forty per centum (40%) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two beneficiaries, forty-five per centum (45%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three beneficiaries, forty-seven and one-half per centum (47½%) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four or more beneficiaries, fifty per centum (50%) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If the decedent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one major dependent, fifty per centum (50%) of the wages received at the time of

the injury, subject to a maximum compensation of fifteen dollars ($15.00) per week; where decedent leaves two major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars ($17.00) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the date of the happening of the injury, as follows: Where decedent leaves one minor dependent, thirty per centum (30%) of the wages received at the time of the injury; where decedent leaves two minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury; where decedent leaves three or more minor dependents, forty per centum (40%) of the wages received at the time of the injury.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of twenty-one dollars ($21.00) per week for a period not exceeding four hundred weeks (400), and subject to change, when the number of beneficiaries or dependents decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of dependency.

2916. Providing for additional compensation in case death occurs while employee is drawing or entitled to draw compensation payment. There shall be paid in addition to other compensation, if death due to injury occurs while the employee is drawing or entitled to draw compensation payment the reasonable burial expenses of the employee, not exceeding one hundred and fifty dollars.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; amd. Sec. 13, Ch. 121, L. 1925.

2917. Medical and hospital services and such other treatment as approved by the board, to be furnished. During the first six (6) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of Five Hundred Dollars ($500.00), unless the employee shall refuse to allow them to be furnished, and unless such employee is under hospital contract as provided in Section 2907 of this Act.

And it is further provided that when such employee is under a hospital contract as above and when hospital or medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, anytime, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

2918. Compensation from what date paid. Where an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of the preceding section, but if disability continues six weeks, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues three weeks, compensation shall be paid from the date of injury.

2919. Compensation to run consecutively—Major and minor dependents not residing in the United States—Manner of payment. Compensation, other than medical, surgical, hospital and burial benefits provided shall run consecutively and not concurrently and payment shall not be made for two classes of disability over the same period, provided that no compensation shall be paid to a major or minor dependent who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents where there be more than one, shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the board.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 15, Ch. 121, L. 1925.

2920. Compensation in case of specified injuries. In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, other than that provided in section 2917, unless the employee is a contributor to a hospital fund or otherwise in this act provided, shall be as follows: Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars ($15.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of seventeen dollars ($17.00) per week; where the injured employee has a wife and one child, or two children, or a father and mother, or two or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of eighteen dollars ($18.00) per week; where the injured employee has a wife and two children, or three children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury, subject to a maximum compensation of nineteen dollars ($19.00) per week; where the injured employee has a wife and three children, or four children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of twenty dollars ($20.00) per week; where the injured employee has a wife and four or more children, or five or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of twenty-one dollars ($21.00) per week; subject to change, when the number of beneficiaries or dependents decreases, and subject in all cases to a minimum

compensation of eight dollars ($8.00) per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder	200 weeks
One arm at the elbow	180 weeks
One arm between wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second distal joint	20 weeks
One first finger and the metacarpal bone thereof	30 weeks
One first finger at the proximal joint	20 weeks
One first finger at the second joint	15 weeks
One first finger at the distal joint	10 weeks
One second finger and the metacarpal bone thereof	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks
One third finger and the metacarpal bone thereof	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and the metacarpal bone thereof	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	200 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	150 weeks
One leg between the knee and ankle	140 weeks
One foot at the ankle	125 weeks
One great toe with the metatarsal bone thereof	30 weeks
One great toe at the proximal joint	15 weeks
One great toe at the second joint	10 weeks
One toe other than the great toe with the metatarsal bone thereof	12 weeks
One toe other than the great toe at proximal joint	6 weeks
One toe other than the great toe at second or distal joint	3 weeks
One eye by enucleation	120 weeks
Total blindness of one eye	100 weeks

Total loss of hearing, one ear..... 20 weeks
Total loss of hearing, both ears..... 120 weeks

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in one accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby.

2921. Hernia cases. A workman, in order to be entitled to compensation for hernia, must clearly prove:

(1) That the hernia is of recent origin;

(2) That its appearance was accompanied by pain;

(3) That it was immediately preceded by some accidental strain suffered in the course of the employment; and,

(4) That it did not exist prior to the date of the alleged injury.

If a workman, after establishing his right to compensation for hernia, as above provided, elects to be operated upon, a special operating fee of not to exceed one hundred dollars ($100.00) shall be paid by the employer, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

2922. Paralysis of limbs considered loss thereof. For the purpose of section 2920, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of said section, the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

History: En. Sec. 16, Ch. 96, L. 1915.
What constitutes loss of limb or part thereof within act, see notes in Ann. Cas. 1918A, 536; Ann. Cas. 1918D, 179.

2923. Adjustment of compensation in case of further injuries. Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this

act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to his past receipt of compensation.

2924. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this act have not been reached, adjustments may be made to meet such changed conditions by increasing, diminishing or terminating compensation payments in accordance with the provisions of this act.

2925. Payments made how. All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915.

2926. Monthly payments converted into a lump sum. The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment and the advisability of such conversion. The board is hereby vested with full power, authority and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919.

Lump sum award under Workmen's Compensation Act, see note in Ann. Cas. 1918D, 694.

2927. Assignment or attachment of payments. No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts.

History: En. Sec. 17, Ch. 96, L. 1915.

2928. Liability in case of bankruptcy or failure is first lien. In case of bankruptcy, insolvency, liquidation, or the

failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims, and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915. Insolvency of insurer or employer as affecting liability for compensation, see note in 8 A. L. R. 1346.

2929. Waivers invalid. No agreement by an employee to waive any rights under this act for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915.

2930. Misrepresenting pay-roll. Any employer who shall misrepresent to the board the amount of a pay-roll upon which the premiums or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

History: En. Sec. 17, Ch. 96, L. 1915.

2931. Act not to apply to railroads engaged in interstate commerce. The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.

History: En. Sec. 17, Ch. 96, L. 1915. Employees within provision applicable to the "operation of railroads," see note in 7 A. L. R. 1160.

2932. Duplicate receipts paid for injuries to be filed—Statements of medical expenditures. Every employer coming under the provisions of compensation plan number one, and

every insurer coming under the provisions of compensation plan number two, shall, on or before the fifteenth day of each and every month, file with the industrial accident board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical, and hospital services, and for the burial of injured workmen.

History: En. Sec. 17, Ch. 96, L. 1915.

2933. Notice of Claims for injuries other than death. No claim to recover compensation under this act for injuries not resulting in death shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer, except as otherwise provided in section 2900 of the revised codes of Montana of 1921, as amended by chapter 121 of the session laws of the nineteenth legislative assembly of 1925; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

2934. Employers and insurers required to file reports of accidents. Every employer of labor and every insurer is hereby required to file with the board, under such rules and regulations as the board may, from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answers to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

History: En. Sec. 17, Ch. 96, L. 1915.

2935. Confidential information used, how. No informa-

tion furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board, in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor.
History: En. Sec. 17, Ch. 96, L. 1915.

2936. American experience table of mortality used. Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American experience table of mortality shall be used.
History: En. Sec. 17, Ch. 96, L. 1915.

2937. Deduction from wages of any part of premium a misdemeanor—Hospital contributions. It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.
History: En. Sec. 17, Ch. 96, L. 1915.

2938. Hearings and investigations—Technical rules. All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.
History: En. Sec. 18, Ch. 96, L. 1915.

2939. Depositions may be taken. The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.
History: En. Sec. 18, Ch. 96, L. 1915.

2940. Powers of board. The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

History: En. Sec. 18, Ch. 96, L. 1915.

2941. Powers to issue writs and process — Fees for serving. The board, and each member thereof, shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

History: En. Sec. 18, Ch. 96, L. 1915. Cited or applied as section 18 (d), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 537, 179 Pac. 499.

2942. Power to administer oaths, certify official acts, issue subpoenas—Witness fees and mileage. The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one

whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

History: En. Sec. 18, Ch. 96, L. 1915.

2943. Power of district court concerning production of testimony—Contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and

place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

History: En. Sec. 18, Ch. 96, L. 1915. Cited or applied as section 18 (f), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 537, 179 Pac. 499.

2944. Certificates and certified copies as evidence. Copies of official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the workmen's compensation act of the state of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the workmen's compensation act of the state of Montana, shall be prima facie evidence thereof.

2945. Apportionments of costs and disbursements. The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing arising out of cases under plan number three may be paid from the industrial accident fund.

History: En. Sec. 18, Ch. 96, L. 1915.

2946. Books, records, and pay-rolls to be open to inspection. The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll, the number of men employed, and such other information as may be necessary for the board and its management

under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the industrial administration fund.

History: En. Sec. 19, Ch. 96, L. 1915.

2947. Jurisdiction of board to hear disputes and controversies. All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

History: En. Sec. 20, Ch. 96, L. 1915.

2948. Presumption as to legality of rules, orders, findings, etc., of board. All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

History: En. Sec. 20, Ch. 96, L. 1915.

2949. Time for filing—Final findings and awards. After a final hearing by the board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

History: En. Sec. 20, Ch. 96, L. 1915.

2950. Power of board to award compensation and time and manner of payment. The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, and order payment thereof during the continuance of such disability; providing however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and in-

demnities coming within the particular plan provided for in this act to which said award and indemnity belong.

History: En. Sec. 20, Ch. 96, L. 1915.

2951. When a nominal disability indemnity may be awarded. If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

History: En. Sec. 20, Ch. 96, L. 1915.

2952. Jurisdiction to rescind or amend any order, decision, award, etc. The board shall have continuing jurisdiction over all its orders, decisions and awards, and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision or award made by it upon good cause appearing therefor. Provided, that the board shall not have power to rescind, alter, or amend any final settlement or award of compensation more than two years after the same has been made, and provided further that the board shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award, rescinding, altering or amending a prior order, decision, or award, shall have the same effect as original orders or awards.

2953. Record of proceedings to be kept and testimony to be taken down—Attorneys. A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney, and the board shall have the power to fix and determine the amount of attorney's fees to be allowed in all proceedings where an attorney appears for either party. In cases of an action to review any order or decision of the board, a transcript of such testimony, together will all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board.

History: En. Sec. 20, Ch. 96, L. 1915.

2954. Collateral attack not permitted. No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

History: En. Sec. 20, Ch. 96, L. 1915. Cited or applied as section 20 (h), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 35, 190 Pac. 124.

2955. Application for rehearing. At any time within twenty days after the service of any order or decision of the board, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds, and upon no other grounds:

(1) That the board acted without or in excess of its powers;

(2) That the order, decision, or award was procured by fraud;

(3) That the evidence does not justify the findings;

(4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing;

(5) That the findings do not support the order, decision, or award;

(6) That the order, decision, or award is unreasonable.

History: En. Sec. 21, Ch. 96, L. 1915.

2956. Board may at any time diminish or increase an award. Nothing contained in the preceding section shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish, or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

History: En. Sec. 21, Ch. 96, L. 1915.

2957. Application for rehearing—Contents—Rules of procedure. The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust, or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe. The board shall have full power and authority to make and pre-

scribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order, and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

History: En. Sec. 21, Ch. 96, L. 1915.

2958. Application for rehearing or appeal shall not operate as stay. An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee, or other person from complying with or obeying any order or requirement of the board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

History: En. Sec. 21, Ch. 96, L. 1915.

2959. Appeal to district court. Within thirty days (30) after the application for a rehearing is denied, or, if the application is granted, within thirty days (30) after the rendition of the decision on the rehearing, and within twenty days (20) after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the state of Montana, in and for the county in said state wherein the accident or injury occurred or the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, and said appeal shall be for the purpose of having the lawfulness of the original order, decision, or award, or order, decision or award on rehearing inquired into and determined.

2960. How appeal taken—Notice—Record—Trial. Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and

service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absense of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915. The power given by this section is that of review rather than that of retrial. Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

2961. Appearances—Setting aside conclusions, orders, etc. of board—Judgment and findings. The board and each party to the action or proceeding before the board shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion, or any order, rule, or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

History: En. Sec. 22, Ch. 96, L. 1915. Cited or applied as section 22 (c), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 35, 190 Pac. 124.

2962. Appeals to supreme court. Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the said district court

which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 22, Ch. 96, L. 1915. This section is invalid to the extent that it attempts to confer authority on the supreme court to try the cause "anew" as though the matter was originally before the court. Willis v. Pilot Butte Min. Co., 58 Mont., 26, 34, 190 Pac. 124.

2963. Appropriations to carry out provisions of act. There is hereby appropriated out of the state treasury the sum of fifty thousand dollars, or so much thereof as may be necessary, to be known as the industrial administration fund, out of which the salaries, traveling, and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

There is hereby appropriated out of the industrial accident fund such sums as may be necessary to pay the compensation provided for in this act.

History: En. Sec. 23, Ch. 96, L. 1915. Cited or applied as section 23 (a), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2964. Court to give liberal construction to act. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915. Cited or applied as section 24 (a), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 58 Mont. 75, 78, 156 Pac. 130.

2965. Effect of decision holding any part of act unconstitutional. If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and

intention of the legislature in enacting the same, as such purpose and intention may be disclosed by the act.

History: En. Sec. 24, Ch. 96, L. 1915.

Though part of this act may be invalid, that does not require the conclusion that any other part of it is invalid if after the invalid part is eliminated, enough is left to accomplish all the purposes for which the legislation was enacted, particularly when this section is considered. Shea v. North-Butte Min. Co., 55 Mont. 522, 538, 179 Pac. 499.

Effect of partial invalidity of Workmen's Compensation Act, see note in Ann. Cas. 1916D, 68.

2966. Money in industrial accident fund held in trust. The moneys coming into the industrial accident fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915.

Cited or applied as section 24 (c), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 40, 190 Pac. 124.

2967. Pending actions not affected by act. This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

History: En. Sec. 24, Ch. 96, L. 1915.

2968. Annual report—Copies for general distribution. The board shall, not later than the first day of October of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915.

2969. When act to take effect. This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

History: En. Sec. 25, Ch. 96, L. 1915.

COMPENSATION PLAN NUMBER ONE.

2970. When and how employer may elect to adopt—Direct payment to employee.

Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by

filing his election to become subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

History: En. Sec. 30, Ch. 96, L. 1915.

2971. Proof of solvency of employer electing plan number one to be filed. Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan number one, shall file such proof of his solvency within the time and such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars ($5.00) to be paid into the industrial administration fund for the filing of every such proof of solvency.

History: En. Sec. 30, Ch. 96, L. 1915.

2972. Employer permitted to carry on business and settle directly with employee—Renewal of application. If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915.

2973. Additional proof of solvency—Revocation of order. The board may at any time require from any employer acting

under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915.

2974. Requiring security of employer. If said industrial accident board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find is reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the

bondsmen or the depositor or the board, account for the same, and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915.

2975. Failure of employer to pay compensation—Duty of board. Upon the failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such state accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

History: En. Sec. 30, Ch. 96, L. 1915.

2976. When employer to make deposit or security to guarantee payment of compensation. Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915.

2977. When employer may be relieved from liability. Any employer against whom liability may exist for compensation

under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 30, Ch. 96, L. 1915.

COMPENSATION PLAN NUMBER TWO.

2978. Employer electing plan No. 2 to insure his liability. Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

History: En. Sec. 35, Ch. 96, L. 1915.

Nature and purpose of industrial insurance, see note in Ann. Cas. 1918D, 1186.

Constitutionality of compulsory industrial insurance, see note in 37 L. R. A. (N. S.) 466.

2979. Duty of employer electing plan No. 2—Amount of insurance necessary. Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed

by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

History: En. Sec. 35, Ch. 96, L. 1915.

2980. Policies to contain what. All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured. When any such policy, or a renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars ($3.00), which fee is to be credited to the industrial administrative fund.

History: En. Sec. 35, Ch. 96, L. 1915.

2981. Agreement to be contained in policies of insurance —Deposit of bonds. No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, in an amount not less than five thousand dollars ($5,000.00) or more than twenty thousand dollars ($20,000-.00), as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount

thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary into cash, and from the proceeds liquidate such liability; and thereafter, said insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

2982. **Policies made subject to this act—Form of insurance.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, and as otherwise provided by law.

History: En. Sec. 35, Ch. 96, L. 1915.

2983. **Renewals.** Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

History: En. Sec. 35, Ch. 96, L. 1915.

2984. **Deposits by insurer with board.** Within thirty days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of section 2981, sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919.

2985. **How insurer relieved from liability.** Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) By purchasing an annuity within the limitations pro-

vided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 35, Ch. 96, L. 1915.

2986. **Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan No. 2 shall be cancelled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

History: En. Sec. 35, Ch. 96, L. 1915.

2987. **Report of insurance companies to board.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

History: En. Sec. 35, Ch. 96, L. 1915.

2988. **Policies to contain clause agreeing to do what—Approval or change.** Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

History: En. Sec. 35, Ch. 96, L. 1915.

2989. **Deposits under plan No. 2 as security.** Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All

earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safe-keeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

History: En. Sec. 35, Ch. 96, L. 1915.

COMPENSATION PLAN NUMBER THREE.

2990. What necessary in electing plan No. 3—Percentage of pay-roll to be paid in under plan.

Every employer, subject to the provisions of compensation plan No. 3 shall, in the manner and at the times herein specified, pay into the state treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Class 1. Broom or brush manufacturing, without sawmill; theater stage employees; moving-picture operators; electrotyping; engraving; lithographing; photo-engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one-hundredths of one per centum.

Class 2. Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class 3. Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor-trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class 4. Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paperhanging; calcimining; whitewashing; making willow baskets; setting tiles; mantles and marble work, inside work only;

making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class 5. Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead, and zinc; operating machine-shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam-pipes; concrete-laying in floors, street-paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and rowboats; well-drilling; constructing and repairing of paving bricks or blocks; one and five-tenths per centum.

Class 6. Operating laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, showcases, office and store furniture and fixtures; cabinet-making; manufacture of wire mattresses, bed-springs, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses, working in foodstuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour-mills, chop mills, feed mills; one and six-tenths per centum.

Class 7. Manufacturing wood fibre ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories, beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes, brooms, with sawmills, earthenware, fire-clay, porcelain ware, pottery, tile, terra-cotta; brush making with saw-mills; one and eight-tenths per centum.

Class 8. Manufacturing of ammonia; operating waterworks, gas-works; grading, either of streets or otherwise, or road-making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile-treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gas-works, and coke-ovens, including laying of mains and con-

nections, without blasting; one and nine-tenths per centum.

Class 9. Manufacturing artificial ice; operating refrigerator plants, cold-storage plants, foundries, packing-houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction-engines, harvesting machinery; manufacturing asphalt; operating steam-heating and power-plants; manufacturing gas or gasoline engines; operating ferries; stone crushing, not at quarries; boat or shipbuilding, other than canoes or row-boats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stock-yards; two per centum.

Class 10. Operating paper-mills, pulp-mills; longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime-kilns or burners, no quarrying; installing boilers, steam-engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing-cases, sash, doors, and blinds; operation and maintenance of interurban railways, without third rail; two and two-tenths per centum.

Class 11. Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class 12. Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing-mills, independent; cement manufacturing; operating blast-furnaces; two and three-tenths per centum.

Class 13. Street or road-making, with blasting; manufacturing wood baskets; kindling-wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class 14. Concentrating and amalgamating of ores; woodworking, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood-saws; painting, exterior work; operating boiler-works; making steam-shovels; boilers; shipwrighting; operating saw-mills, lath-mills; bridge-work factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class 15. Operating rolling-mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars;

making and repairing of locomotives and railroad cars; cutting stone at stone-yards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle-mills; operating quarries; two and three-quarters per centum.

Class 16. Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, water-works and water-systems; installing furnaces; constructing blast-furnaces; sewer-building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal-mines; three per centum.

Class 17. Operating dry-docks, including floating dry-docks; ornamental metalwork within buildings; electric railway construction, without rock-work or blasting; railroad construction, including street and cable railways, without rock-work or blasting; building canals, without rock-work or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing dry-docks; three and one-quarter per centum.

Class 18. Carpenters not otherwise specified; constructing grain elevators, not metal-framed; stump pulling with donkey-engines; steam, electric and cable railway construction, with rock-work or blasting; construction of logging railways, with rock-work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power-plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class 19. Pile-driving; clearing land with blasting; galvanized iron or tin-works; marblework; fire-proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class 20. Constructing breakwaters, marine railways, and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft-sinking, not otherwise specified; four per centum.

Class 21. Moving safes, boilers, machinery; construction

of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roofwork; slate work; stonework; stone-setting; brickwork construction, not otherwise specified; construction of canals, with rock-work or blasting; bridge-building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class 22. Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer-building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing of fireworks; five per centum.

Class 23. Erecting fire-escapes, fire-proof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class 24. Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous works; caisson works; six and one-half per centum.

Class 25. House-moving, house-wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class 26. Manufacturing powder, dynamite, and other explosives, not otherwise specified; ten per centum.

Class 27. Any employer and his employees engaged in non-hazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of compensation plan No. 3. In such event, such employer and employees shall be known as class 27, the rate of assessment in which shall be one-half of one per centum.

History: En. Sec. 40, Ch. 96, L. 1915. Cited or applied as section 40, chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

2990-A. Permitting employers in certain non-hazardous occupations to elect to comply and come under the provisions of plan 2 and 3 of this act—Classification of such employers and their employees. Any employer engaged in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising, may elect to comply with the provisions of plan 2 or 3 of this act and pay into the industrial accident fund the premiums provided in the act, in which event he shall not be liable to respond in damages at common law or by statute for injury

or death of any employee during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn. Such employer shall be classified under the provisions of section 2992 of this act as to rate of assessments, which assessment shall be paid in the manner and at the times specified under plan 2 or 3 of the workmen's compensation act.

History: En. Sec. 17, Ch. 121, L. 1925.

2991. Computation of assessments. If a single establishment or work comprises several occupations listed in the preceding section in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards, provided that in no case shall any assessment levied under the provisions of this act be for a less amount than two and one-half dollars.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921.

2992. What classification advisory only and subject to rearrangement, etc. The classification of hazardous occupations in section 2990 and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 2990, as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in said section shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change, except that in case of new industries, or industries not enumerated in section 2990, the board shall have the right to make an immediate classification thereof and establish a rate therefor.

History: En. Sec. 40, Ch. 96, L. 1915.

2993. Intent and purpose of plan No. 3—Fund to be paid

for what purpose only—Accounts. It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the industrial accident fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of compensation plan No. 3; provided, that accounts shall be kept with each industry, trade, occupation, or employment in accordance with the foregoing classifications, or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

History: En. Sec. 40, Ch. 96, L. 1915.

2994. Initial payment July 15, 1915. There shall be collected from all classes as initial payment into the industrial accident fund, on or before the fifteenth day of July, 1915, one-fourth of the premium assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months or any month thereafter, to meet the requirements of the industrial accident fund, no assessment shall be called for such month.

History: En. Sec. 40, Ch. 96, L. 1915.

2995. Manner and time of making payments by employers. The first payment shall be collected upon the pay-roll of the months of April, May, and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February 1st in the year following, in the manner above provided.

History: En. Sec. 40, Ch. 96, L. 1915.

2996. In case of default, rates to be advanced twenty-five per cent. Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of sections 2990 to 2995, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

History: En. Sec. 40, Ch. 96, L. 1915.

2997. Changes in classification of risks to be equalized. Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

History: En. Sec. 40, Ch. 96, L. 1915.

2998. Deficiency in industrial accident fund. If, at the end of any year, it shall be seen that the contribution to the industrial accident fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

History: En. Sec. 40, Ch. 96, L. 1915.

2999. Amount to be set apart when required payment reasonably certain. Upon the happening of an accident where death or the nature of the injury renders the amounts of future payments certain, or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the industrial accident fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments, not exceeding, however, the sum of four thousand dollars for any one case.

History: En. Sec. 40, Ch. 96, L. 1915.

3000. Investment of reserve—Payment of installments. The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana,

or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly installments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested by the board in the securities specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921.

3001. Treasurer to keep accounts of segregations. The treasurer of the board shall keep an accurate account of all such segregations of the industrial accident fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915.

3002. Collection in case of default by employer. If any employer shall default in any payment to the industrial accident fund, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

History: En. Sec. 40, Ch. 96, L. 1915.

Cited or applied as section 40 (m), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

3003. Injury happening while employer is in default. For any injury happening to any of his workmen during default in any payment to the industrial accident fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the industrial accident fund the amount of such default, together with the penalty prescribed by section 2996.

History: En. Sec. 40, Ch. 96, L. 1915.

Neglect of statutory duty by employer as permitting action by employee for personal injuries notwithstanding compensation act, see note in Ann. Cas. 1918D, 334.

3004. Assignment of cause of action to state. The person entitled to sue under the provisions of the preceding section shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the industrial accident fund. If such person shall elect to proceed against the defaulting employer, such election

shall constitute a waiver of any right to compensation under the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915.

3005. Prosecution or settlement of cause of action. Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the board, in its discretion.

History: En. Sec. 40, Ch. 96, L. 1915.

3006. Application for compensation under plan No. 3. Where a workman is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

History: En. Sec. 40, Ch. 96, L. 1915.

3007. Payment of physician. For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the industrial administration fund, one and one-half dollars for each case.

History: En. Sec. 40, Ch. 96, L. 1915.

3008. Application in case of death. Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or some one in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board.

History: En. Sec. 40, Ch. 96, L. 1915.

3009. What included in computing compensation in hazardous employment. In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piece-work, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915.

3010. Disbursements out of industrial accident fund—Employer to pay warrant. Disbursements out of the industrial accident fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the accident fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915.

3011. Earnings and interest on deposits—Treasurer to make no profit. All earnings made by the industrial accident fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

History: En. Sec. 40, Ch. 96, L. 1915.

SAFETY PROVISIONS.

3012. Unsafe places for workmen forbidden.

No employer shall construct, maintain or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

History: En. Sec. 50, Ch. 96, L. 1915.

3013. Removal of safety devices, etc., forbidden. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any

way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees.

History: En. Sec. 50, Ch. 96, L. 1915.

Failure to use safety appliances as serious and wilful misconduct barring recovery under compensation act, see notes in 4 A. L. R. 121; 9 A. L. R. 1377.

3014. Jurisdiction and supervision of board over employment and places of employment. The board is vested with full power and jurisdiction over, and shall have such supervision of every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

History: En. Sec. 50, Ch. 96, L. 1915.

3015. Powers of board regarding safety of employees. The board shall have power, in addition to other powers herein granted, by general or special orders, rules, or regulations, or otherwise:

1. To declare and prescribe such safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe;

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employees;

3. To fix and order such reasonable standards for the construction, repair, and maintenance of places of employment as shall render them safe;

4. To require the performance of any act necessary for the protection of life and safety of employees;

5. To declare and prescribe the general form of industrial accident reports, the accidents to be reported, and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from

requiring supplemental accident reports; provided, however, that where, by the laws of the state of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.

History: En. Sec. 50, Ch. 96, L. 1915.

3016. Notice of hearing for purpose of considering and issuing general safety orders. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the state. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the board after a hearing has been held.

History: En. Sec. 50, Ch. 96, L. 1915.

3017. Places defined as hazardous to be inspected once each year. After July 1, 1915, every place of employment of a work or occupation defined by sections 2847 to 2852, inclusive, to be hazardous shall be inspected at least once during each year by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

History: En. Sec. 51, Ch. 96, L. 1915.

3018. Report of inspectors. A report of such inspection shall be filed in the office of the board, and a copy thereof given the employer.

History: En. Sec. 51, Ch. 96, L. 1915.

3019. Certificate of safety of inspected places. Each place of employment inspected as provided in section 3017, and found in a satisfactory condition, shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be

prominently displayed, under glass, in one of the principal places of the establishment so inspected.

History: En. Sec. 51, Ch. 96, L. 1915.

3020. When board may order safety devices installed. If, after such inspection and report thereof to the board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this act, the board shall order the installation, use, maintenance, and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of the preceding section.

History: En. Sec. 51, Ch. 96, L. 1915.

3021. When board or inspector may order place of employment closed and put in safe condition. If, after such inspection, the board or any inspector or examiner thereof shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

History: En. Sec. 51, Ch. 96, L. 1915.

3022. Fee for annual inspection to be paid by employer. For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year; provided, that no inspection fee under this section shall be less than five dollars.

History: En. Sec. 52, Ch. 96, L. 1915.

3023. Fees in subsequent inspections. The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made, shall be:

Where the annual pay-roll for the preceding year shall

have been not more than twenty-five thousand dollars, five dollars;

Where the annual pay-roll for the preceding year shall have been more than twenty-five thousand dollars, but not more than one hundred thousand dollars, ten dollars;

Where the annual pay-roll for the preceding year shall have been more than one hundred thousand dollars, but not more than five hundred thousand dollars, twenty dollars;

Where the annual pay-roll for the preceding year shall have been more than five hundred thousand dollars, but not more than one million dollars, forty dollars;

Where the annual pay-roll for the preceding year shall have been more than one million dollars, fifty dollars.

History: En. Sec. 52, Ch. 96, L. 1915.

3024. Inspection fees and fines to be paid monthly into what fund. All fees received by the board for inspection, or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act, shall be paid monthly to the state treasurer, who shall credit such payment to the industrial administration fund.

History: En. Sec. 52, Ch. 96, L. 1915.

3025. Orders concerning places and employments found to be unsafe. Whenever the board shall find that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment, and may in said order direct that such additions, repairs, improvements, or changes be made; and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

History: En. Sec. 53, Ch. 96, L. 1915.

3026. Board may grant time within which to comply with any order. The board may, upon application of any employer or other person affected thereby, grant such time as may

reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

History: En. Sec. 53, Ch. 96, L. 1915.

3027. Board may summarily investigate places believed to be unsafe. Whenever the board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

History: En. Sec. 53, Ch. 96, L. 1915.

3028. Compliance with orders, directions, rules, etc., enjoined. Every employer, employee, and other person shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with, and observance of every such order, decision, rule, or regulation.

History: En. Sec. 53, Ch. 96, L. 1915.

3029. Act not to deprive any other public corporation, board, or department of jurisdiction. Nothing contained in this act shall be construed to deprive any other public corporation, board, or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

History: En. Sec. 53, Ch. 96, L. 1915.

3030. Orders, rules, findings, etc., of board as evidence. Every order of the board, general or special, its rules or regulations, findings, or decisions shall be admissible in evidence in any prosecution for, or suit to prevent the violation of any

of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

History: En. Sec. 53, Ch. 96, L. 1915.

3031. Board may investigate cause of all industrial accidents—Orders and recommendations concerning same. The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable; provided, that neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation based on or arising out of such injury or death.

History: En. Sec. 53, Ch. 96, L. 1915.

3032. When rate upon place may be advanced fifty per cent. If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under compensation plan No. 3, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

History: En. Sec. 53, Ch. 96. L. 1915.

3033. Violation of safety provisions a misdemeanor. Every employer, employee, or other person, who either individually or acting as an officer, agent, or employee of a corporation, or other person, violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

History: En. Sec. 54, Ch. 96, L. 1915.

Rules of Procedure

OFFICE AND OFFICE HOURS

1. The office of the industrial accident board is in the board of health building at the state capitol, city of Helena. The office is open continuously from 9 a. m. until 5 p. m., each day except Sundays and legal holidays, and is in charge of the secretary as the executive representative of the board, subject to his orders and instructions.

The board fully realizes that its members are public servants and that it is charged with the administration of an important department of the state government, which to be successful must have the support and co-operation of the people of the state, which the board earnestly desires.

The members realize that the work entrusted to them calls for a high conception of its importance and requires the same judicial impartiality as is expected of any tribunal administering justice and it is with that understanding that they have devoted their efforts to the duties before them.

The board anxiously desires the public to realize that its office is in every sense a public place, to which citizens of the state are welcome at all times, without the formality of an invitation of any kind. The board was created to serve the people of Montana and it is anxious to do its full duty.

In the work of administering the law the board has endeavored to pursue a policy adapted to make effective the spirit and principle of the compensation act, and to that end, adopted a set of rules to govern its procedure that have stood the test of nine years' experience very satisfactorily and with but slight changes. They have been continued in force or readopted for the ensuing year as follows:

SESSIONS OF THE BOARD

2. The board will be in continuous session and open for the transaction of business during all the business hours of each day except Sundays and holidays. All sessions will be open to the public and will stand and be adjourned without further notice thereof on its records.

In addition to the continuous session, the board will convene in regular session, as a body, each Monday at 10 o'clock

a. m., for consultation and for the disposition of important or special matters, including all financial questions that should come before the board as a whole.

DUTIES OF THE SECRETARY OF THE BOARD

3. The secretary shall keep a record of all meetings of the board; shall attend to all correspondence of the board; shall issue all notices of hearing before the board, or before any member thereof; shall issue, or cause to be issued, all subpoenas and processes emanating from the board; shall arrange the indexing, numbering and preserving of all pleadings, reports and papers of all kinds filed with the board and shall perform such other duties as the law directs or as the board may assign to him.

FORMS PRESCRIBED

4. Printed forms of notices, application blanks, proof and all proper forms required by the provisions of this act will be furnished on request to the board. Such forms must be used in all cases where they are prescribed.

REQUIREMENTS OF EMPLOYERS

5. Every employer filing his election to become subject to compensation plan number one, shall within a reasonable time thereafter furnish the board with satisfactory proof of his ability to meet all obligations imposed on him by the provisions of the act.

Every employer filing his election to become subject to compensation plan number two shall within a reasonable time thereafter file with the board whatever insurance policies he has taken out and also shall furnish any information required by the board concerning his operations.

Every employer who either elects or is subject by operation of law, to come under compensation plan number three, shall promptly pay the amount of his assessment to the treasurer of the industrial accident board and shall also furnish copies of his monthly pay-roll covering each month's operation promptly to the board on the first of each month for the preceding month.

NOTICE OF ACCIDENTS

6. Every employer of labor and every insurer under the

act shall immediately report to the board any accident to a workman causing death or disability continuing for more than one full working day and thereafter shall make such supplementary reports regarding the condition of the injured workman as may be necessary. Such report or reports shall be made in full on forms prescribed by the board for that purpose.

Physicians in charge of hospitals or otherwise attending injured employees, under the compensation act, must fill out reports showing the condition of the injured on blanks provided for that purpose, obtained from the employer in whose service the accident occurred.

REPORTING OF ACCIDENTS

7. All employers operating under the law shall make reports to the board of all accidents to their employees, when they occur, or if preferred may make weekly reports covering all accidents occurring during the preceding week. Such reports shall be on and in accordance with the requirements of the report blank "Form No. 37" of the board.

In all cases where the disability resulting to the injured employee continues for more than fourteen days, exclusive of the day of the accident, a further report on and in accordance with the requirements of report blank, "Form No. 43," shall be made to the board on the 15th day of such disability; provided that in all cases where the accident causes the loss of a member, or death, such report on Form No. 37 shall be made to the board as soon as possible after the occurrence of such accident and in any event within ten days after such accident or such death, as the case may be.

CASES REQUIRING IMMEDIATE REPORTS

8. In all cases where a claim for compensation is filed with the board by an injured employee, if the report required by Rule 7 has not been made and filed by the employer on account of any disagreement which may exist as to the continuance of the disability or for any other reason, then such employee shall forthwith be required to file a report of the accident on and in accordance with the requirements of blank Form No. 36 of the board.

SUPPLEMENTAL REPORT

9. In accidents where death occurs a supplemental report must be made out and filed with the board giving full information to the board as to the dependents or beneficiaries of the deceased.

In cases of continuing and indeterminate disability, supplemental report form, entitled, "Certificate of Condition" No. 44, will be supplied on which information covering the condition of the injured employee can be reported to the board.

FINAL REPORT

10. When the disability of the injured employee terminates, either by his returning to work or by being discharged as recovered by the attending physician, a final report thereof shall be filed with the board on and in accordance with Form No. 43. When the payment of compensation for the loss of a member or in case of death has been fully made, the final report thereof shall be filed with the board, together with settlement receipts on and in accordance with Form No. 63, signed by the employee or his dependents or beneficiaries, as the case may be.

COMPENSATION PAYMENTS

11. When compensation payments are made, receipt for the monthly or final payments on, and in accordance with Forms No. 63 and 64, signed by such employee, or his dependents, shall be filed in the office of the board when received by the employer from the employee, or at the latest on the first of each month for the preceding month.

PERSONAL SIGNATURE NECESSARY

12. The personal signature of the injured employee, or the dependent, or dependents, or beneficiaries, to whom compensation is to be paid, is required and must always appear on all receipts on account of compensation and settlement receipts of all kinds. Typewritten signatures will not be accepted and where the party in question cannot write, the mark of same, when properly witnessed, will be accepted.

Illegible signatures should be written in duplicate on receipts and agreements to facilitate the work of the filing de-

partment of the board, so that confusion in the indexing of cases and reference thereto may be avoided. The assistance will be as helpful to employers and insurers as to the board, as it will guarantee such classification and indexing as will result in the furnishing of prompt and full information on any case, at any time.

ADJUSTMENT OF CLAIMS

13. Claims for compensation filed with the board shall be considered and adjusted in the order in which they are received. The claims shall be entered in a file properly adapted for the purpose, and shall be numbered in the order received. All papers referring to any case shall bear the number of such cases as on the original file. All claims for compensation account injury, not resulting in death, must be made in writing by the party injured within three months after the injury is received, unless for some unavoidable reason, acceptable to the board, the filing of claim has been delayed and in any or all cases of personal injury and death, the claims shall be forever barred unless presented in writing within six months of the date of the happening of the accident, unless the party or parties in question are minors or "mental incompetents."

INJURED LEAVING LOCALITY

14. Injured employees who are receiving compensation or are entitled to same, who desire to leave the locality where they have been employed, shall notify the board of their intention to leave, and shall accompany such notice with a certificate of a physician, satisfactory to the board, which shall state the exact condition of the injured, with the probable time of the continuance of disability. When the employee in question has changed his residence or locality all payments of compensation due or coming to him shall only be made upon the receipt of a physician's certificate, showing that compensable disability still exists.

LUMP SUM PAYMENTS

15. Payments of awards in lump sum will only be permitted when the board is clearly convinced after investigations made or hearings had, that such form of settlement will be to the unquestioned and actual advantage of the claimant.

The question will only be considered upon the petition of parties affected, which must show the signatures and address of the dependent or beneficiary and the address of the employer. It is manifest that the intention of the legislature was to provide that compensation should be paid to the persons or families entitled to it in monthly payments, because when so paid it would more effectually meet and relieve the wants of the injured employees, their families and beneficiaries, than if paid in lump sum. Therefore lump sum payments will be authorized only in cases where the circumstances clearly prove the wisdom of so doing. The desire of the applicant to go to another state, city or town, or to buy property, or to invest in business, etc., do not in themselves constitute conclusive reasons for lump sum payments. In a general way, the circumstances and conditions that will justify such payments will consist of those existing prior to the accident or created by it, such as mortgage indebtedness on the home of the employee or sickness constituting indefinite disability or necessity of educating children, or some such extraordinary or extraneous condition. In such cases, all such facts and conditions must be set forth in detail in the petition submitted to the board by the applicant.

COMPROMISES

16. Claims involving questions relating to the extent of the injury, its effects as to impairment, irregularity in observance of the provisions of the act or of these rules, or any proceedings or conditions wherein it is difficult to apply the text of the act without an apparent injustice to the claimant, may be compromised by the board after investigation and presentation of all the obtainable facts relating thereto. In cases where a compromise agreement has been reached between the employer and the injured employee, the board will investigate such compromise and if it finds that the agreement conforms to the spirit of the act and provides substantial justice to the parties concerned, especially to the injured workman, the compromise agreement will be approved. No compromise agreements between the employer and employee are valid without the approval of the board.

HOW HEARINGS SHALL BE CONDUCTED

17. The rules of practice governing hearings before the

board shall conform substantially to those obtaining before the courts of the state, yet, as the entire purpose of the board in holding hearings is to secure the facts in as direct and simple a manner as possible, the procedure will be plain and free from technicalities. The law does not contemplate that the board shall be bound by the usual common law or statutory rules of evidence, but gives it the latitude of making the inquiry in such manner as is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the law. Therefore, there will be no technical rules of practice introduced in connection with the conduct of hearings, but they will be conducted in such a way that every latitude will be given to investigations covering the question at issue, in whatever manner the board's judgment may determine is best adapted to ascertain and determine expeditiously and accurately the substantial rights of the parties at interest. Issue can be joined by claimant filing complaint with the board, accompanied by proof of service of copy on defendant, followed by filing of defendant's answer, accompanied by proof of service of copy of answer upon the claimant.

HOW TO MAKE PROOF

18. Proof of claims can be submitted by affidavit when so desired by claimant and not objected to by board, although the board appreciates that proof furnished through the medium of affidavits is not as desirable as oral testimony regularly adduced before the board sitting for that purpose. The board will, when it deems necessary, require medical examinations and order the submission of oral testimony by witnesses, whether desired by claimant or not, provided that the claimant shall be notified of the time, place and manner of taking such oral testimony in ample time for him to be present with whatever witnesses he may desire. However, to the end that proceedings may be disposed of expeditiously with the least possible expense to the parties, the board is willing, wherever and whenever possible, that proofs may be submitted in the form of affidavits, provided that unless otherwise stipulated or ordered by the board in all disputed, contested or litigated claims, proof shall be submitted as in civil cases in the district courts of this state by oral and written testimony adduced at the hearing and depositions taken in the manner prescribed by the code of civil procedure of the Revised Codes of Montana.

Arguments on hearings before the board will be permissible only when called for by the board or any of its members, and then only for such time as the board in its discretion may allow.

DEPOSITIONS

19. Depositions may be taken and used upon any hearing where the conveniences of the witnesses of the parties of the hearing justifies. Parties desiring to take the testimony of witnesses who live beyond the jurisdiction of the state, or who for any lawful reason are unable to attend the hearing, may place in evidence at the hearing depositions that are taken before some person authorized to take depositions; provided, that application is duly made to the board for permission to take such deposition and upon the issuance by the board of a commission directed to some competent person to take the testimony of such witness, or witnesses, provided that in all other particulars the person applying for such commission shall comply with the terms, provisions and requirements of the Montana statutes governing the taking of depositions. By consent of the board depositions may be taken by stipulation of the parties.

STIPULATION OF FACTS

20. The parties to any proceeding or controversy before the board may stipulate the facts in writing and thereupon the board may make its order or award, based upon such stipulation.

In view of the fact that proceedings may be disposed of with great expedition, and also with slight expense to the parties concerned where the facts covering the controversy are submitted by stipulation, the board desires to encourage the parties to any proceedings to stipulate the facts wherever it can be reasonably done.

CONTINUANCES

21. The policy and endeavor of the board will be to determine all questions brought before it as speedily as possible, but continuances of hearings for good cause, properly shown, may be granted upon the request of either party. The board will continue hearings on its own motion only when the vol-

ume of business is such as to determine it, or when the proof is not satisfactory or is insufficient.

NOTICE OF HEARING

22. To the end that all proceedings before the board shall be conducted with the least possible expense and with the greatest practical dispatch, notice of all hearings or proceedings before the board, unless otherwise directed, shall be given by mail and proof of service thereof. Unless otherwise ordered, at least ten days' notice of hearings will be given from the time of mailing the notice.

If on account of congestion of work, or delay in filing proof or from any other cause, the hearing of a particular claim is delayed, or postponed, the time of hearing such claim shall be set by the board at as early a date as possible and the secretary shall send notices to all parties concerned, advising them of the date and time set for hearing. In the event that either of the parties to the controversy fail to appear at the time set for such hearing, the case will proceed to the final determination and an award will be made according to the facts adduced; unless either party asking for a continuance or postponement shall show upon affidavit, properly submitted, that his absence is unavoidable and that if the hearing is to proceed without his being present it will work a material and irreparable injury to him.

DISPUTES

23. In case of disputes in matters coming under the jurisdiction of the board, either party to the controversy may appeal to the board for relief and the board shall make such order or award as shall be lawful or just in the premises. In all such cases, the party complaining shall file his application with the board, with proof of service of a copy on the adverse party. Such adverse party shall file his answer thereto with the board within fifteen days after such service with proof of service of a copy of such answer on the party making the application. In the event that the papers filed justify the board, in its judgment, in concluding that the matter at controversy deserves a hearing, it will notify the parties of the time and place decided upon for such hearing, giving the parties in question at least ten days' notice concerning same.

AMENDMENTS

24. Amendments may be made to any papers or proofs that have been submitted to the board upon application being made to the board for such permission and upon good cause shown. The board may on its own motion modify or change its order, finding or award at any time it shall discover that any mistakes have been made in connection therewith.

DESIGNATION OF PARTIES TO HEARING

25. The parties to any original proceeding before the board shall be designated as the plaintiff and the defendant. The party filing the application, petition or complaint, in such proceeding shall be designated as the plaintiff, and the adverse party as the defendant to the controversy or proceeding whatever it may be.

The applications or petitions for the revision or modification of any award or order of the board shall be entitled with the parties plaintiff and defendant as in the proceeding in which the award or order was made and shall bear the number of the original proceeding.

FORM OF PAPERS

26. All petitions, motions, pleadings, complaints, applications, also special answers, must be printed or typewritten in the form prescribed by the board and must be filed in duplicate, provided that if a greater number of copies is necessary the same shall be supplied by the party presenting the papers to be filed.

PLAINTIFFS AND DEFENDANTS

27. All persons should be joined as plaintiffs in whom any right to any relief arising out of the transaction is alleged to exist. In the event that any such persons should refuse to join as a plaintiff they should then be joined as defendants and the facts of the refusal to join as plaintiff stated in the application, petition or complaint.

All persons should be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in alternative and the board at any time, upon proper showing, or of its own motion, may order that any additional

party be joined as defendant when it deems the presence of such party desirable or necessary.

ANSWER—SPECIAL—WHEN TO BE FILED

28. The defendant may file an answer of denial to the application petition or complaint of the plaintiff at any time, within the time limit specified, but in the event that no such answer is filed the allegations contained in the application petition or complaint regardless of the absence or denial must be substantiated by proof, unless otherwise ordered by the board.

If the defendant rely upon any special defense, such as, that the injury or death of the employee was due to the willful misconduct of the employee including intentional, self-inflicted injury, willful failure or refusal to use a safety appliance, willful failure or refusal to perform a duty required by the statute or any other defense of contention and avoidance, such special defense must be set up in an affirmative answer filed at least five days before the date set for the hearing.

REHEARINGS

29. Any party, or parties, aggrieved or dissatisfied with an award, order or decision of the board, may at any time within twenty days after the service of same apply for a rehearing on the grounds that the board acted without, or in excess of its power; that the order, decision or award was procured by fraud; that the evidence does not justify the findings; that the applicant has discovered new evidence that the findings do not support the order, decision or award, or that the order, decision or award is unreasonable. The application for rehearing shall set forth specifically and in full detail the grounds upon which said rehearing is asked for.

APPEALS

30. At any time within thirty days after the application for a rehearing has been denied, or if the application is granted, then within thirty days after the rendering of the decision on the rehearing and within twenty days after notice thereof, any party dissatisfied thereby may serve notice on the board of appealing from the action of the board, to the district court in the county where the employer lives or where his principal

place of business may be located. The said appeal shall consist of serving a written notice upon any member of the board or upon the secretary of the board by the delivery of a copy of such notice, to such member or secretary and the filing of the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adverse party if there be any.

EXCEPTIONS—APPEARANCES

31. In all hearings and proceedings before the board, when requested, an exception will be given and entered of record in favor of the party against whom any ruling is made, unless such party has defaulted.

The parties to any controversy or proceedings before the board may appear in person in their own behalf or if they desire and so advise the board, they may be represented by an attorney.

MODIFICATION OF AWARDS

32. The board having continuing power and jurisdiction over an award, may make changes or modifications of its formal findings, either upon its own motion or upon the application of the beneficiary or beneficiaries or employer. If the change is determined upon through the board's own motion, then it must first notify the beneficiary or beneficiaries or employer before making the change or modification.

When the application has been made for a modification of an award, it shall be set for hearing as in the case of original application.

COPY OF RECORDS

33. Either or any of the parties to any proceedings before the board, desiring to preserve the record, will be permitted to do so, providing they provide for the expense or cost of stenographer to do same.

ADDRESSING COMMUNICATIONS

34. Under all circumstances and conditions, address all communications, regardless of the subject matter of same, to the Industrial Accident Board, Helena, Montana.

CHANGES IN RULES

35. Rules of the board are subject to change, additions and amendments at any time, without notice, and when in the judgment of the board new conditions arise requiring new methods of procedure.

It must be conceded that no rules can be adopted that will cover all cases that may arise, therefore, each case must depend, to a great extent, upon its own peculiar facts and individual circumstances.

Maximum Fee Schedule and Rules

MEDICAL AND SURGICAL FEE SCHEDULE AND RULES GOVERNING SURGICAL SERVICE, MEDICAL, HOSPITAL AND NURSING TO INJURED WORKMEN COMING UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT OF THE STATE OF MONTANA

NOTE—This schedule of medical and surgical fees adopted by the Industrial Accident Board is applicable to industrial accidents under the Compensation law only and is in no sense applicable to the services rendered or fees charged in other classes of practice.

Adopted by the Industrial Accident Board of the State of Montana in accordance with Chapter 213, Revised Codes of Montana, 1921.

These fees and the rulings herein contained are applicable only to injuries sustained on or after January 19, 1931. They are applicable to cases where the employee is under hospital contract only to the extent that there is no conflict with the contract.

In all cases, form 39 (Attending Physician's Report) shall be mailed within one week after first attendance. If the history of the case is not complete at this time, form 44 (Certificate of Condition) shall be promptly furnished upon call by the employer, the insurer or the Board. Form 73 (Physician's Claim for Services) should always be filed within ninety days after first attendance and must be itemized and also show extent and nature of treatments, dressings or operations. The account must be sworn to before a notary public or other officer qualified to administer oaths. Upon the back of form 39 (Attending Physician's Report), the doctor must indicate upon the chart the exact point of amputation or other permanent disability in order that determination may be made of the amount of compensation due the injured employee according to permanent partial disability schedule. One copy of form 39, form 73 and of each report on form 44, must be filed with the Board by the doctor direct, if the case is under Plan Three, or by the employer or insurer if the case is under Plan One or Plan Two. A copy of the report of any extra or special examination of a claimant must be filed with the Board.

The following fees represent a maximum except that fees higher than schedule may be approved by the Board when warranted by extraordinary difficulties encountered by the surgeon, upon satisfactory showing to warrant such increase.

Where expenses for medical, nurse, hospital services and medicines are in excess of $500.00 for the first six months following date of injury, payment for such services and medicines shall be made on a pro rata basis.

Unusual cases, procedures and treatments not specified are entitled to the same fee as specified procedures and treatments of approximately equal difficulty.

In a flat fee case that is transferred to another surgeon, one fee only will be paid, proportioned at the discretion of the Board.

Dental work made necessary by accident and the cost thereof must be agreed upon by the employer, the insurer or the Board, as the case may be, and the injured claimant, before bill is contracted. In all cases where agreement cannot be reached, same must be submitted to the Board for a decision before contract for work is entered into.

Mechanical appliances are not provided under the Compensation Law.

Medical bills paid by employee must be itemized and when required by the employer, the insurer or the Board, must be approved by the attending physician.

Fees covering daily dressings shall not be paid unless the nature and extent of the injury as shown by the proof on file clearly indicates the necessity for same. This fee schedule includes all dressings unless the case shows that an excessive amount of material had to be used. In that case, it will be paid for at cost.

NOTE—Physicians' bills cannot be honored until reports of accidents are received from the employer and from all physicians that have attended the case. When all reports are at hand, payment for medical and surgical aid, if in accordance with the schedule hereinafter provided, will be made promptly.

Payment will not be made for house calls after patients become ambulatory and able to go to the physician's office for treatment or dressings. Payment will not be made for physician's mileage for visiting patients transferred to another locality for hospital care unless the approval of the employer, the insurer or the Board is obtained for continuing in charge of the case thus transferred.

Physicians or surgeons who render bills for service not actually performed will forfeit right to any payment in a case that constitutes the first offense and will be prosecuted by the Board for second offense.

GENERAL ITEMS

First visit, including dressing and report	$ 3.00
First visit as above, night (10 p. m. to 7 a. m.)	5.00
Subsequent visits at office, including dressings	2.00
Subsequent visits at hospital, including dressings	2.00
Subsequent visits at house, including dressings	3.00
Physical examination, including written opinion (except Form 44)	10.00
Consultation, each physician, when necessary	10.00
Assistant to surgeon, at major operation	20.00
Assistant to surgeon at minor operation, when necessary	10.00
Administering anaesthetic, general	10.00
Administering anaesthetic, minor operation at office	5.00
Post mortem	25.00
Mileage beyond corporate limits of city, one way, per mile	1.00

GENERAL SURGERY

Minor operation, as repair of small wounds, incision of small abscesses, removal of small foreign bodies or tumors or any similar minor operation not requiring an anaesthetic	5.00
Operations of secondary importance, requiring general anaesthesis, as repair of large wounds, incision of large abscesses, re-	

moval of foreign bodies or tumors not involving important structures	25.00
Major operations, as removal of foreign bodies or tumors involving important structures, or any operation requiring unusual skill or care (not otherwise classified)	100.00
Any operation involving laparotomy, including subsequent treatment	150.00
Hernia, radical operation for inguinal femoral, umbilical, or ventral, including subsequent treatment	100.00
Hernia, by taxis	15.00
Paracentesis or thoracis	15.00
Incision or rib resection or empyema	75.00
Aspirating joints, abdomen, or bladder	15.00
Operation for removal of necrossed bone, hand or foot	15.00
Operation for removal of necrossed bone, arm or leg	25.00
Operation for varicose veins of limbs, including subsequent treatment	75.00
Operation for repair of severed nerves	50.00
Trephining or resection of skull	100.00
Ligation or resection of important vessels, $20 to	60.00
Transfusion	50.00
Spinal puncture	10.00
Spinal anaesthesia	10.00
Application of plaster cast to body	25.00
Tendoplasty	50.00
Arthrotomy arthrectomy or excision:	
Carpal, tarsal, wrist or ankle	30.00
Elbow or shoulder	100.00
Knee or hip	100.00
Mandible or maxilla	75.00

GENITO-URINARY

Catherization of uretha or passing of sounds	3.00
Internal urethrotomy or divulsion	30.00
External urethrotomy	50.00
Amputation of penis	75.00
Nephrotomy, nephrectomy or nephropexy	100.00
Varicocele, operation for	25.00
Cystoscopy	15.00
Catherization of ureters	35.00

EYE SPECIALIST

Refraction, presbyopia	5.00
Refraction, complicated	10.00
Removal of foreign bodies from cornea or conjunctiva	3.00
Removal of foreign bodies from ear, nose or throat	3.00
Removal of foreign bodies from anterior chamber	50.00
Removal of foreign bodies from Viterous chamber	75.00
Tenotomy	50.00
Advancement	75.00

Traumatic cataract	100.00
Iridectomy	75.00
Enucleation	75.00
Chalazion	10.00
Pterygium	25.00
Ectropion or entropion	50.00
Minor operation	5.00
Epiphora	25.00

FRACTURES

Flat Fee

(Including reduction and subsequent treatment.)

In a case where multiple fractures occur the fee shall be the major plus an additional fifty per cent of the fee prescribed for each of the others, as herein classified:

Femur	$100.00
Patella, without operation, longitudinal fracture	10.00
Patella, without operation, transverse fracture	50.00
Patella, with operation, transverse fracture	75.00
Clavicle	40.00
Radius or ulna	35.00
Radius and ulna	60.00
Humerus	60.00
Finger (1)	15.00
Each additional finger	5.00
Toe (1)	15.00
Each additional toe	5.00
Carpal bones	25.00
Metacarpals (single or multiple)	25.00
Tibia	50.00
Fibula	25.00
Tibia and fibula	75.00
Potts fracture	75.00
Ribs (1 or more)	20.00
Tarsal bones	25.00
Metatarsals (single or multiple)	25.00
Pelvis	75.00
Scapula	35.00
Maxillary, inferior (not including dental)	25.00
Nasal bones	25.00

Compound fracture: An additional charge of 50 per cent may be added in cases of compound fractures.

Unoperated complicated fractures in which union is not taking place within ninety days, an additional charge may be allowed at the discretion of the Board.

DISLOCATIONS

Flat Fee

(Including reduction and subsequent treatment.)

In cases of more than one dislocation, the fee shall be the major one plus an additional 50 per cent of the fee prescribed for each of the others as herein classified:

Hip	$ 50.00
Wrist	20.00
Finger or toe	10.00
Shoulder (new dislocation)	25.00
Elbow or ankle	25.00
Knee	35.00
Maxilla	10.00

AMPUTATIONS

Flat Fee

(Amputation and subsequent treatment.)

In cases of more than one amputation, the fee shall be the major one plus an additional 50 per cent of the fee prescribed for each of the others as herein classified.

Extremity at hip	$150.00
Leg above knee	75.00
Leg below knee	50.00
Foot at or below ankle	50.00
Arm at shoulder	100.00
Arm above elbow	50.00
Arm below elbow	50.00
Hand at or below wrist	50.00
Index finger, thumb or big toe	25.00
Other finger or toe	15.00

An additional charge of 50 per cent may be made in cases of amputation where infection exists prior to operation.

MISCELLANEOUS

Cuts, contusions, etc., of other members will be considered a part of the major injury and not considered separately. Sprains will be considered minor injuries.

X-RAY

The following fees are for ordinary examinations. A sufficient number of plates to determine the nature and extent of the injury may be made. These fees include interpretation and written opinion, when required. Radiographs will not be paid for unless sufficiently sharp and clear to be diagnostic. Fees are based on plates 8"x11" or larger, and two exposures are to be made on one plate when practicable. Plates or prints to be furnished Board if billed.

	One Plate	Two Plates
Hand, wrist, foot or ankle	$ 7.50	$12.50
Forearm, elbow, arm or shoulder	7.50	12.50
Knee or thigh	7.50	12.50
Hip, chest, eyeball, head or spine	10.00	15.00
Kidney, bladder or gall bladder	10.00	15.00
Localization foreign body in eye	10.00	15.00
Stomach and intestines (three plates)	——	25.00

HOSPITAL

Hospital care when necessary not to exceed $4.00 per day. Fees covering hospital care will not be approved if the case is shown to be an ambulatory one. Operating room, $10.00. Dressing room, $5.00.

LIABILITY FOR PAYMENT

The liability of the employer, insurer, or Board, for payment in each case where there is no hospital contract or hospital fund is limited to a maximum of $500.00 for service during the first six months following injury. Liability for payment in excess of this amount rests upon the injured employee.

RULES

The following rules are hereby established by the Industrial Accident Board of Montana, in connection with foregoing schedule of fees:

Rule 1.

Every employee who shall have been injured during the course of his employment by accident, shall have a right to select a surgeon of his own choice, if conveniently located, to render treatment during the period of his disability from such injury; except where there is a hospital contract. In such cases the employee will be required to report in the manner prescribed by such contract. Provided that at any time the Board shall deem it advisable to transfer him to some other surgeon or specialist or place of treatement, the right to do so is reserved by the Board. The permission of the Board may be had for such transfer upon written application of the injured party, the employer or the insurer and upon investigation showing it advisable that such change be made.

Rule 2.

An injured employee must follow the directions of his surgeon and comply with all reasonable requests during the time that he is under his care.

Rule 3.

All bills rendered for medical and surgical services to injured workmen will be considered only when all reports required of the surgeon have been duly filed with the employer, insurer or Board, as the case may be.

Rule 4.

(a) All reports to the Board must be made on regular blanks approved by it for such purposes and shall fully set forth condition found and treatment given.

(b) Where services have been rendered by more than one party, each party must render a separate report.

(c) Fees shall not be approved for more than one attending physician in case treatment is rendered over the same period of time, except for services of consultant, anaesthetist or assistant.

Rule 5.

Fees covering services rendered by an assistant or a qualified anaesthetist will not be paid unless such person is qualified to render such assistance. Medical and surgical fees will not be paid to laymen.

Rule 6.

Fees covering services of consultant, assistant or qualified anaesthetist will be allowed only when it is clearly apparent from the nature and extent of the injury that such services were necessary.

Rule 7.

Fees covering daily dressings will not be paid unless the nature and extent of the injury clearly indicates the necessity for them.

Rule 8.

High frequency treatment or other electrical treatment will not be paid for unless specially authorized by the employer, insurer or Board, as the case may be.

Rule 9.

Fees covering ordinary dressing materials or drugs used in treatment of injury shall not be considered separately, but shall be included in the amount allowed for office dressings. If the record of the case shows that it was necessary to use an extraordinary amount of dressing material, as in badly infected wounds and burns, this extra dressing material will be paid for at cost.

Rule 10.

Fees covering hospital care shall be separate from those for professional services, and such fees for hospital service shall not extend beyond the time of necessary hospital care. When it becomes evident that the patient needs nothing but board and room he must be discharged from the hospital, as the act does not contemplate board and room for a non-hospital case.

Rule 11.

Fees for hospital care will represent only actual time patient is in the hospital. Where surgical operation makes it necessary to use an operating room a fee of $10.00 will be allowed for same and where it is plainly evident that it is only necessary to use a dressing room, the fee will be $5.00.

Rule 12.

Private rooms may be given cases when patient is so severely injured as to demand quiet surroundings and special service. In every such case this permission is for seven days only. Additional period requires permission of the employer, insurer or Board, as the case may be.

Rule 13.

In case of very severe injury where it is plainly evident that a special nurse is required, the nurse may be furnished, but if continued more than seven days, it must be by an order of the employer, insurer or Board, as the case may be.

Rule 14.

Where a workman receives an injury, resulting in the breaking or loss of normal teeth, making dental work necessary, the claimant must first file a claim with the Board, then go to a surgeon and have said surgeon issue a statement in duplicate setting forth the nature of injury and condition of teeth, and file statement as other reports are filed. The applicant will then secure an estimate for the work required for restoration and submit same to the Board for necessary authority.

Rule 15.

In all cases of fracture, or where injury is of indefinite character, a radiograph must be made. This radiograph must be of such character as to clearly show existing condition.

Rule 16

In all cases of puncture wounds where the possibility of tetanus infection exists the proper preventative serum must be administered at once.

Rule 17.

(a) In the event that a workman is injured in an establishment, the surgical services of which are under contract, and a physician be called to render emergency services for the reason that the contracting surgeon or his assistants are not available, the Board requires that such physician relinquish the care of such case to the surgeon of contract when he desires to so supplant his attendance.

(b) In these cases the maximum fee that such surgeons may charge is that provided for in the fee schedule for such services, bearing effective date of August 15, 1923, and such fee or fees is an obligation on the surgeon of contract.

Rule 18.

In preparing reports doctors and surgeons will use typewriter or pen and ink, will sign personally and affix after the signature the letters designating the title he is entitled to use.

Reports not written plainly and legibly will be returned.

Glossary of Medical Terms

Anterior Chamber	Portion of eye between cornea and iris containing the aqueous humor.
Arthrectomy	Exsection or removal of a joint.
Arthrotomy	Cutting into a joint.
Aspiration	The drawing off of a fluid or air from a cavity.
Carpal	Wrist.
Castration	Removal of testicles or ovaries.
Cataract	A loss of transparency of the crystalline lens of the eye or its capsule.
Catheterization	Draining the bladder or ureters.
Chalazion	Small tumor of the border of eyelid.
Clavicle	Collar bone.
Colles	A fracture at the wrist.
Conjunctiva	A membrane covering the eyeball and lining the eyelids.
Cornea	A transparent membrane forming the outer coat of the eye.
Cystoscopy	Inspection of the interior of the bladder by means of a cystoscope.
Estropion	Deformity of eyelids to roll outwards.
Empyema	An accumulation of pus in the chest cavity.
Entropion	Deformity of eyelids to infold.
Enucleation	Removal of eyeball.
Epiphora	Watery eyes or overflow of tears due to narrowing or stoppage of the tear duct.
Femoral Hernia	Protrusion through femoral canal of the abdominal wall in groin.
Femur	The bone of the upper leg.
Fibula	One of the two bones of the lower leg.
Hernia	Rupture, the protrusion of any organ or part of an organ or other structure through the wall of a cavity normally containing it.
Humerus	The bone of the upper arm.
Inguinal Hernia	Protrusion through abdominal wall in the groin.
Iridectomy	Excision of a portion of the iris.
Laparotomy	Operative incision through any part of the abdominal wall.
Ligation	Tying off.
Mandible	Lower jaw.
Maxilla	Upper jaw.
Necrossed	Dead, degenerated.
Nephrectomy	Removal of the kidney.
Nephropexy	Operative fixation of a floating kidney.
Nephrotomy	Operative incision into the kidney.
Paracentesis	Removal of fluid from a body cavity.
Patella	Knee cap.

Pericardii	Membranous sac surrounding the heart.
Potts	A fracture at the ankle.
Presbopia	Far sighted.
Ptergium	Hyperthrophied patch of conjunctiva and subconjunctival tissue of the eye.
Radius	One of the bones of the forearm.
Refraction	Determination of the nature and degree of refractive errors in the eye.
Scapula	Shoulder blade.
Tarsal	Ankle.
Tendoplasty	Reparative or plastic surgery of the tendons.
Tenotomy	Surgical operation on tendons of an eye muscle.
Thorax	Chest.
Tibia	One of the bones of the lower leg.
Trephining	The removal of a disc of bone.
Umbilical Hernia	Protrusion through abdominal wall at the umbilicus.
Ulna	One of the bones of the forearm.
Urethrotomy	Operation for division of a stricture of the urethra.
Varicocele	Enlargement of the veins of the spermatic cord.
Varicosed	Enlarged, dilated.
Ventral Hernia	Protrusion through abdominal wall except in groin or at umbilicus.
Vitreous Chamber	Large cavity behind the lens in the eye containing the vitreous humor.